PUBLIC EMPLOYMENT RELATIONS (EXCERPT)
Act 336 of 1947

423.210 Prohibited conduct; service fee.

Sec. 10. (1) It shall be unlawful for a public employer or an officer or agent of a public employer (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section 9; (b) to initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization: Provided, That a public employer shall not be prohibited from permitting employees to confer with it during working hours without loss of time or pay; (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization: Provided further, That nothing in this act or in any law of this state shall preclude a public employer from making an agreement with an exclusive bargaining representative as defined in section 11 to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative; (d) to discriminate against a public employee because he has given testimony or instituted proceedings under this act; or (e) to refuse to bargain collectively with the representatives of its public employees, subject to the provisions of section 11.

(2) It is the purpose of this amendatory act to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if such requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee which may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

(3) It shall be unlawful for a labor organization or its agents (a) to restrain or coerce: (i) public employees in the exercise of the rights guaranteed in section 9: Provided, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances; (b) to cause or attempt to cause a public employer to discriminate against a public employee in violation of subdivision (c) of subsection (1); or (c) to refuse to bargain collectively with a public employer, provided it is the representative of the public employer's employees subject to section 11.

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1973, Act 25, Imd. Eff. June 14, 1973.

Constitutionality: In Lehnert v Ferris Faculty Association, 500 US 507; 111 S Ct 1950; 114 L Ed 2d 572 (1991), the United States Supreme Court held that a collective-bargaining unit constitutionally may compel its employees to subsidize only certain union activities. "[I]n determining which activities a union constitutionally may charge to dissenting employees ... chargeable activities must (1) be 'germane' to collective-bargaining activity; (2) be justified by the government's vital policy interest in labor peace and avoiding 'free riders'; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop."

Ruling on the respondent union's disputed activities, the Court held:

(1) The respondent may not charge the funds of objecting employees for a program designed to secure funds for Michigan public education or for that portion of a union publication that reports on those activities. The Court found none of the activities "to be oriented toward the ratification or implementation of petitioner's collective-bargaining agreement."

(2) The respondent may bill dissenting employees for their share of general collective-bargaining costs of the state or national parent union. The district court had found these costs to be germane to collective bargaining and similar support services; the court agreed with the finding.

(3) The respondent may not charge for the expenses of litigation that does not concern the dissenting employees' bargaining unit or, by extension, union literature reporting on such activities. The Court found extra-unit litigation to be proscribed by the First Amendment of the United States Constitution because it is "more akin to lobbying in both kind and effect" and not germane to a union's activities as an exclusive bargaining agent.

(4) The respondent may not bill for certain public relations activities. The Court states: "[T]he ... activities ... entailed speech of a political nature in a public forum. More important, public speech in support of the teaching profession generally is not sufficiently related to the union's collective-bargaining functions to justify compelling dissenting employees to support it. Expression of this kind extends beyond the negotiation and grievance-resolution contexts and imposes a substantially greater burden upon First Amendment rights ... ."

(5) The respondent may charge for those portions of a union publication that concern teaching and education generally, professional development, unemployment, job opportunities, union award programs, and miscellaneous matters. The Court noted that such informational support services are neither political nor public in nature and that expenditures for them benefit all, without additional infringements upon the First Amendment.

(6) The respondent may bill for fees to send delegates to state and national affiliated conventions. The Court found that participation by local members in the formal activities of the parent is an important benefit of affiliation and an essential part of a union's discharge of its duties as a bargaining agent.

(7) The respondent may charge expenses incidental to preparation for a strike which, had it occurred, would have been illegal under Michigan law. The Court, noting that the Michigan Legislature had imposed no restriction, stated there was no First Amendment limitation on such charges. The Court added that such expenses are "substantively indistinguishable from those appurtenant to collective-bargaining negotiations ... enure to the direct benefit of members of the dissenters' unit ... and impose no additional burden upon First Amendment rights."

Popular name: Public Employment Relations